

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

RICHARD M. PROFFITT,
Plaintiff,

V.

**WESTERN VIRGINIA REGIONAL
JAIL et al.,
Defendants.**

Civil Action No. 7:23cv00276

MEMORANDUM OPINION

By: Robert S. Ballou
United States District Judge

Richard M. Proffitt, a Virginia inmate proceeding *pro se*, has filed this civil rights action under 42 U.S.C. § 1983 against the Western Virginia Regional Jail and Wellpath, the company providing medical services to the jail. Proffitt alleges that he was severely beaten by another inmate, sustaining serious medical injuries for which he was hospitalized. He further alleges that after his return to the jail, he has been denied adequate medical treatment for his injuries and has not been taken to surgical follow-up appointments. Upon screening of the complaint pursuant to 28 U.S.C. § 1915A(a), the court finds that Proffitt has failed to state a claim against these defendants upon which relief can be granted.

A valid cause of action under § 1983 must allege a deprivation of Constitutional rights by a *person* acting under color of state law. The jail itself is not a person subject to suit under § 1983. *McCoy v. Chesapeake Corr. Ctr.*, 788 F. Supp. 890, 894 (E.D. Va. 1992). Accordingly, the suit against the jail will be dismissed.

Wellpath, as a private company employing medical personnel acting under color of state law, can be held liable under § 1983 only when an official policy or custom of the company causes the alleged constitutional violation. *Hendrick v. Wexford Health Sources, Inc.*, 141 F. Supp. 3d 393, 401 (D. Md. 2015). Proffitt has not alleged that a policy of Wellpath required

medical personnel to deny him adequate treatment and/or follow-up visits. To the extent that Proffitt seeks to impose liability on Wellpath based solely on the conduct of its employees, such vicarious liability is not available under § 1983. *Id.* at 400. Proffitt may amend his complaint within 30 days to allege additional facts against Wellpath if such facts are available. If he fails to do so, this matter will be dismissed.

An appropriate Order will be entered this day.

Enter: May 29, 2023

/s/ Robert S. Ballou

Robert S. Ballou
United States Magistrate Judge